

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

SMITH & NEPHEW, INC.)	
Plaintiff,)	
)	
v.)	
)	
NEW HAMPSHIRE INSURANCE)	
COMPANY, ALLIED WORLD)	
ASSURANCE COMPANY LTD.,)	
ZURICH INSURANCE COMPANY,)	No. 2:04-cv-03027-STA-cgc
GERLING KONZERN ALLGEMEINE)	
VERSICHERUNGS AG and)	
ASSICURAZIONI GENERALI, S.P.A.)	
(UK BRANCH),)	
)	
Defendants.)	

ORDER GRANTING JOINT MOTION TO DISMISS CLAIMS
AGAINST AND BY DEFENDANT ZURICH INSURANCE COMPANY

Before the Court is the joint motion by plaintiff Smith & Nephew, Inc. (“S&N”) and defendant Zurich Insurance Company (“Zurich”) to dismiss, with prejudice, all claims and requests for relief that S&N has asserted against Zurich in this action, and all claims and requests for relief that Zurich has asserted against S&N or S&N’s attorneys in this action.

The joint motion states that S&N and Zurich have agreed to request that the Court dismiss, with prejudice, (1) all of S&N’s claims and requests for relief in this action against Zurich, whether asserted in the Second Amended Complaint (ECF No. 49) or otherwise in this action, and (2) all of Zurich’s claims and requests for sanctions and other relief against S&N or its attorneys in this action, whether asserted in Zurich’s Amended Answer and Counterclaim (ECF No. 175), or in the motion for sanctions against S&N and its attorneys (ECF No. 438), which was supplemented by a filing on March 28, 2014 in which Zurich and other insurer defendants in this action set forth specific requests for sanctions against S&N and its attorneys (ECF No. 525).

Based on said joint motion and the manifest consent of S&N and Zurich, the joint motion is granted.

It is therefore ORDERED:

1. That all claims by S&N asserted against Zurich in any portion of S&N's Second Amended Complaint (ECF No. 49) in this action, are dismissed with prejudice;
2. That Zurich's counterclaim for declaratory relief and other requests for relief asserted against S&N in Zurich's Amended Answer and Counterclaim (ECF No. 175) in this action are dismissed with prejudice;
3. That all requests by Zurich for sanctions against S&N and/or S&N's attorneys in this action, including the portions of the defendants' motion for sanctions and supplementation thereof (ECF Nos. 438 and 525) that is asserted on behalf of Zurich, are dismissed with prejudice;
4. That all other claims and requests for relief of any kind asserted in this action (i) by S&N against Zurich, and (ii) by Zurich against S&N, are dismissed with prejudice; and
5. That each party shall bear its own costs, legal fees, and other expenses.

This Order shall not be construed to dismiss or otherwise affect in any way any claims or requests for relief by S&N against any of the other insurer defendants in this action; nor shall this Order be construed to dismiss or otherwise affect in any way any of the other insurer defendants' counterclaims or other requests for relief, including the other insurer defendants' interests in the motion for sanctions and/or any supplement thereto.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: December 20, 2018